
By: **Delegate Valderrama**
Introduced and read first time: February 22, 2000
Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Handguns - Local Regulation**

3 FOR the purpose of authorizing each county municipal corporation and special taxing
4 district to regulate the purchase, sale, taxation, transfer, manufacture, repair,
5 ownership, possession, and transportation of a handgun under certain
6 circumstances; and generally relating to the local regulation of handguns.

7 BY repealing and reenacting, with amendments,
8 Article 27 - Crimes and Punishments
9 Section 36C, 36D, and 36H
10 Annotated Code of Maryland
11 (1996 Replacement Volume and 1999 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article 27 - Crimes and Punishments**

15 36C.

16 (a) The following items of property shall be subject to seizure and forfeiture,
17 and, upon forfeiture, no property right shall exist in them:

18 (1) Any handgun being worn, carried, or transported in violation of § 36B
19 of this article OR ANY PUBLIC LOCAL LAW, ORDINANCE, RESOLUTION, OR
20 REGULATION; and

21 (2) All ammunition or other parts of or appurtenances to any such
22 handgun worn, carried, or transported by such person or found in the immediate
23 vicinity of such handgun.

24 (b) (1) Any property subject to seizure under subsection (a) hereof may be
25 seized by any duly authorized law enforcement officer, as an incident to an arrest or
26 search and seizure.

1 (2) Any such officer seizing such property under this section shall either
2 place the property under seal or remove the same to a location designated either by
3 the Department of State Police or by the law enforcement agency having jurisdiction
4 in the locality.

5 (c) (1) Upon the seizure of a handgun pursuant to this section, the seizing
6 authority shall attempt to ascertain and locate its owner by whatever inquiry and
7 investigation is considered appropriate. If, as a result of an inquiry or investigation,
8 the name and address of the reputed owner of the handgun is ascertained and the
9 owner is a nonresident of Maryland, the seizing authority shall notify the appropriate
10 law enforcement agency of the jurisdiction of which the owner is a resident and
11 forward the handgun to that agency for disposition if the handgun is not needed for
12 investigation or evidence or disposed of under paragraph (4) of this subsection. If the
13 owner is a resident of the State the seizing authority may return the handgun to the
14 owner. If the seizing authority does not return the handgun, it shall promptly notify
15 the owner that he may apply within 30 days to the seizing authority for a review to
16 determine whether the owner knew or should have known that the handgun was
17 worn, carried, transported or used in violation of § 36B OR ANY PUBLIC LOCAL LAW,
18 ORDINANCE, RESOLUTION, OR REGULATION, and whether the owner is qualified to
19 possess it. Qualification for possession is the same as for sale or transfer under § 442
20 of this article. Knowingly giving false information or making a material misstatement
21 in the application for review or an investigation pursuant thereto is subject to the
22 penalties set forth in § 449 of this article.

23 (2) Upon timely receipt of an application, the seizing authority shall hold
24 an informal review not subject to the Administrative Procedure Act on the matter of
25 whether the owner either knew or should have known of the use or intended use of
26 the handgun in violation of § 36B OR ANY PUBLIC LOCAL LAW, ORDINANCE,
27 RESOLUTION, OR REGULATION. If, after that review, the determination of the seizing
28 authority is favorable to the owner, the handgun shall be released to the owner if he
29 is qualified to possess it, unless the handgun is needed as evidence in a criminal case
30 or investigation, in which event the handgun shall be promptly returned upon the
31 final conclusion of the case or investigation.

32 (3) If the seizing authority determines after review that the handgun
33 should be forfeited to the State, the owner shall be so notified at his last known
34 address and within 30 days thereafter he may petition the appropriate District Court
35 for release of the handgun to him. The State's Attorney shall represent the State in
36 the action. The court shall hear the matter and grant whatever relief is proper and in
37 accordance with this subsection.

38 (4) In a proceeding in a criminal cause involving a seized handgun a
39 court may order forfeiture or release of the seized handgun in accordance with the
40 criteria for release set forth in this subsection. Persons who have made written claim
41 of ownership of a handgun to the seizing authority or the State's Attorney shall be
42 notified of the proceeding and of the claimant's right to present his claim at the
43 proceeding. A claimant who has completed the review procedure provided for by this
44 subsection does not have the right to a second review under this paragraph.

1 (5) If no timely application for a review under paragraph (2) of this
2 subsection or a petition to the court under paragraph (3) of this subsection is effected,
3 or order for release under paragraph (4) of this subsection is issued, the handgun
4 shall be forfeited to the State without further proceedings and destroyed by the
5 seizing authority or disposed of in accordance with subsection (d) of this section.

6 (6) If a reputed owner of a seized handgun is not ascertained and located
7 pursuant to inquiry or investigation conducted under paragraph (1) of this subsection,
8 the handgun is forfeited to the State without further proceedings.

9 (d) (1) Whenever property is forfeited under this section, the law
10 enforcement agency seeking forfeiture of the property may:

11 (i) Order the property retained for the official use of the law
12 enforcement agency; or

13 (ii) Make such other disposition of the property as the law
14 enforcement agency deems appropriate.

15 (2) Within 30 days of the disposition of the forfeited property, the law
16 enforcement agency shall notify the Secretary of the State Police of:

17 (i) The description of the property forfeited;

18 (ii) The type of disposition made;

19 (iii) The identity of the person to whom the property was
20 transferred for disposal, retention, or resale; and

21 (iv) If the person was a licensed firearms dealer, the firearms
22 dealer's license number and address.

23 36D.

24 (a) Any law enforcement officer who, in the light of his observations,
25 information, and experience, has a reasonable belief that (i) a person may be wearing,
26 carrying, or transporting a handgun in violation of § 36B of this article OR ANY
27 PUBLIC LOCAL LAW, ORDINANCE, RESOLUTION, OR REGULATION, (ii) by virtue of the
28 person's possession of a handgun, such person is or may be presently dangerous to the
29 officer or to others, (iii) it is impracticable, under the circumstances, to obtain a
30 search warrant; and (iv) it is necessary for the officer's protection or the protection of
31 others to take swift measures to discover whether such person is, in fact, wearing,
32 carrying, or transporting a handgun, such officer may:

33 (1) Approach the person and identify himself as a law enforcement
34 officer;

35 (2) Request the person's name and address, and, if the person is in a
36 vehicle, his license to operate the vehicle, and the vehicle's registration;

1 (3) Ask such questions and request such explanations as may be
2 reasonably calculated to determine whether the person is, in fact, unlawfully wearing,
3 carrying, or transporting a handgun in violation of § 36B OR ANY PUBLIC LOCAL LAW,
4 ORDINANCE, RESOLUTION, OR REGULATION; and

5 (4) If the person does not give an explanation which dispels the
6 reasonable belief which the officer had, conduct a search of the person, limited to a
7 patting or frisking of the person's clothing in search of a handgun. The law
8 enforcement officer in acting under this section shall do so with due regard to all
9 circumstances of the occasion, including but not limited to the age, appearance,
10 physical condition, manner, and sex of the person approached.

11 (b) In the event that the officer discovers the person to be wearing, carrying,
12 or transporting a handgun, he may demand that the person produce evidence that he
13 is entitled to so wear, carry, or transport the handgun pursuant to § 36B(c) of this
14 article OR ANY PUBLIC LOCAL LAW, ORDINANCE, RESOLUTION, OR REGULATION. If
15 the person is unable to produce such evidence, the officer may then seize the handgun
16 and arrest the person.

17 (c) Nothing in this section shall be construed to limit the right of any law
18 enforcement officer to make any other type of search, seizure, and arrest which may
19 be permitted by law, and the provisions hereof shall be in addition to and not in
20 substitution of or limited by the provisions of § 594B of this article.

21 (d) Any law enforcement officer sued in a civil action for conducting a search
22 or seizure pursuant to this section which is alleged to be unreasonable and unlawful
23 shall, upon his request, be defended in said action and any appeals therefrom, by the
24 attorney general.

25 (e) Every law enforcement officer who conducts a search or seizure pursuant
26 to this section shall, within twenty-four hours after such search or seizure, file a
27 written report with the law enforcement agency by which he is employed describing
28 the circumstances surrounding the search or seizure and the reasons therefor on a
29 form prescribed by the Secretary of Public Safety and Correctional Services. Such
30 report shall include the name of the person searched. A copy of all such reports shall
31 be sent to the Secretary of the State Police.

32 36H.

33 (a) Except as provided in subsections (b), (c), [and] (d), AND (E) of this section,
34 the State of Maryland hereby preempts the rights of any county, municipal
35 corporation, or special taxing district whether by law, ordinance, or regulation to
36 regulate the purchase, sale, taxation, transfer, manufacture, repair, ownership,
37 possession, and transportation of the following:

38 (1) [Handgun, as defined in § 36F(b) of this article;

39 (2)] Rifle, as defined in § 36F(d) of this article;

40 [(3)] (2) Shotgun, as defined in § 36F(g) of this article; and

1 [(4)] (3) Ammunition and components for the above enumerated items.

2 (B) ANY COUNTY, MUNICIPAL CORPORATION, OR SPECIAL TAXING DISTRICT,
3 WHETHER BY LAW, ORDINANCE, RESOLUTION, OR REGULATION, MAY REGULATE THE
4 PURCHASE, SALE, TAXATION, TRANSFER, MANUFACTURE, REPAIR, OWNERSHIP,
5 POSSESSION, AND TRANSPORTATION OF A HANDGUN, AS DEFINED IN § 36F(B) OF
6 THIS ARTICLE, PROVIDED THAT SUCH REGULATION IS MORE RESTRICTIVE OR
7 STRINGENT THAN OTHERWISE PROVIDED BY STATE LAW.

8 [(b)] (C) Any county, municipal corporation, or special taxing district may
9 regulate the purchase, sale, transfer, ownership, possession, and transportation of the
10 weapons and ammunition listed in subsection (a) of this section:

11 (1) With respect to minors;

12 (2) With respect to these activities on or within 100 yards of parks,
13 churches, schools, public buildings, and other places of public assembly; however, the
14 teaching of firearms safety training or other educational or sporting use may not be
15 prohibited; and

16 (3) With respect to law enforcement personnel of the subdivision.

17 [(c)] (D) To the extent that local laws or regulations do not create an
18 inconsistency with the provisions of this section or expand existing regulatory control,
19 any county, municipal corporation, or special taxing district may exercise its existing
20 authority to amend any local laws or regulations that exist before January 1, 1985.

21 [(d)] (E) In accordance with law, any county, municipal corporation, or special
22 taxing district may continue to regulate the discharge of handguns, rifles, and
23 shotguns, but may not prohibit the discharge of firearms at established ranges.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2000.